

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Edward Grant Bunker, #297944	)	
	)	C.A. No. 9:06-1401-MBS
Petitioner,	)	
	)	
vs.	)	
	)	<b>ORDER</b>
C. Anthony Burton, Acting Warden of	)	
Ridgeland Correctional Institution,	)	
	)	
Respondent.	)	

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Petitioner, Edward Grant Bunker is in the custody of the South Carolina Department of Corrections, serving concurrent state and federal sentences. On May 8, 2006, Petitioner filed an action pursuant to 28 U.S.C. § 2241 seeking a writ of habeas corpus alleging that his federal sentence was improperly calculated because he did not receive credit for time served while awaiting sentencing by the federal court. On August 20, 2007, the court issued an order summarily dismissing Petitioner's claims finding that the petition failed to state a claim upon which relief could be granted.

On September 10, 2007, Petitioner filed a motion for reconsideration pursuant to Rule 59(3) of the Federal Rules of Civil Procedure. On May 14, 2008, the court ordered that the case be reopened stating that if Petitioner has exhausted his remedies with the Bureau of Prisons, he has stated a claim for which relief can be granted. The court referred the case to Magistrate Judge George C. Kosko for further findings of fact as to whether Petitioner has exhausted his administrative remedies. On June 6, 2008, Magistrate Judge Kosko issued a Report and Recommendation indicating that Petitioner has exhausted his administrative remedies and recommending that the court close the file in this case and allow Petitioner to submit an updated

§ 2241 petition, which would be assigned a new civil action number. Petitioner objects to being asked to submit a new § 2241 petition arguing that this would delay an ultimate termination of the case.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination on any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge. 28 U.S.C. § 636(b)(1).

The Magistrate found that Petitioner has exhausted his administrative remedies. The Magistrate based this finding on a letter submitted by Petitioner in which the Federal Bureau of Prisons informed Petitioner that it had determined that it could not give Petitioner the requested “jail credit.” This decision was based on Bureau of Prisons’ Program Statement 5880.28.

As a general rule, courts will deny judicial relief until all administrative remedies have been exhausted. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938). In this context, before a case can be reviewed by a district court, the Bureau of Prisons must make a sentence credit determination under 18 U.S.C. § 3585(b) (1994). United States v. Jeter, 161 F.3d 4 (4th Cir. 1998). Petitioner’s letter from the Bureau of Prisons indicates that the Bureau of Prisons has decided to deny Petitioner sentence credit. Therefore, Petitioner has exhausted his administrative remedies. Accordingly, the court adopts the Magistrate’s finding that Petitioner has exhausted his administrative remedies.

The court declines to adopt the Magistrate’s recommendation that this court close the file

on this case and allow the petitioner to submit an updated § 2241 petition. The court agrees with Petitioner's objection that a new § 2241 petition is not necessary to the resolution of this case and would only serve to delay proceedings because Petitioner has stated a claim for which relief can be granted pursuant to § 2241. Accordingly, the court recommits the matter to the Magistrate Judge for further pre-trial handling and a Report and Recommendation on the merits.

**IT IS SO ORDERED.**

s/ Margaret B. Seymour  
United States District Judge

November 5, 2009  
Columbia, South Carolina